



DEPARTMENT OF THE INTERIOR

25 CFR Part 1187

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RIN 1076-AF63

Indian Business Incubators Program

AGENCY: Office of the Assistant Secretary, Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Office of Indian Economic Development (OIED) is finalizing a new regulation to implement the Native American Business Incubators Program Act. The Indian Business Incubators Program (IBIP), also known as the Native American Business Incubators Program, is a program in which OIED provides competitive grants to eligible applicants to establish and operate business incubators that serve Tribal reservation communities. These regulations establish who is eligible for the program, how to apply, how OIED will evaluate applications and make awards, and how OIED will administer the program.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, Bureau of Indian Affairs, telephone (202) 273-4680, elizabeth.appel@bia.gov.

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I. Statutory Authority

OIED is issuing this rule under the authority of the Native American Business Incubators Program Act, Public Law 116-174.

II. Need for This Rulemaking

On October 20, 2020, Congress enacted the Native American Business Incubators Program Act, Pub. L. 116-174, codified at 25 U.S.C. 5801 *et seq.* In the Act, Congress established the Native American Business Incubators Program and required the Secretary of the Interior to promulgate regulations to implement the program. *See* 25 U.S.C. 5804.

Congress found that the Native American Business Incubators Program is necessary because, in addition to the challenges all entrepreneurs face when transforming

ideas into profitable business enterprises, entrepreneurs face an additional set of challenges that requires special knowledge when they want to provide products and services in Tribal reservation communities. Congress further found that the business incubator model is suited to accelerating entrepreneurship (and ultimately, economic development) in Tribal reservation communities. Business incubators help start-up and early-stage businesses by offering the business owners a range of services, such as: mentorships, networking, technical assistance, and access to investors. Through these services, incubators promote collaboration to address challenges and provide individually tailored services to overcome the obstacles that are unique to each participating business.

III. Overview of Rule

This rule establishes the IBIP in accordance with the Native American Business Incubators Program Act. This regulation names the program IBIP, rather than the Native American Business Incubators Program, to avoid use of the acronym “NABIP,” which would likely cause confusion due to its similarity to at least one other grant program acronym related to Native American businesses.

Through the IBIP, OIED will provide competitive grants to eligible applicants to establish and operate business incubators that serve entrepreneurs (start-up and early-stage businesses) who will provide products or services to Tribal reservation communities. A business incubator is an organization that assists entrepreneurs in becoming viable businesses by providing advice and services to entrepreneurs to navigate obstacles in transforming their innovative ideas into operational businesses. Examples of services that a business incubator may provide are workspace and facilities, advice on how to access capital, business education, counseling, and networking and mentorship opportunities. Indian Affairs does not currently have any regulations in place that provide for a grant program for Indian business incubators. The rule being finalized today will provide the framework for operation of the grant program so that there is certainty as to

who is eligible for a grant, how eligible applicants can apply for a grant, how OIED will evaluate, award, and administer the grants, and what terms and conditions will apply to the grants. This rule will enable OIED to provide grants that will stimulate economic development in reservation communities.

The rule consists of six subparts, each of which is described below.

- Subpart A – General Provisions and Eligibility: Defines terms defined in the statute consistent with the statutory definitions, replacing citations with restatements of the provisions cited where appropriate, and adds a new term for “IBIP” in lieu of “Native American Business Incubator Program (NABIP)” to avoid confusion because the acronym “NABIP” is similar to other grant programs. This subpart also describes who is eligible to receive an IBIP grant, to include the following entities that meet certain additional requirements set out in § 1187.3:
 - Tribes;
 - Tribal colleges and universities;
 - Institutions of higher education; and
 - Tribal or private nonprofit organizations that provide business and financial technical assistance.
- Subpart B – Applying for a Grant: Describes how an eligible applicant applies for a grant, adding the specificity that applications must be submitted through www.grants.gov. This subpart also includes the statutory requirements for what must be included in an application and written site proposal, and how to submit a joint application. The regulations add that joint applications must identify which of the entities submitting the joint application will be the lead contact for the purposes of grant management.

- Subpart C – Evaluation of Grant Applications: Describes the criteria OIED will use to evaluate each IBIP grant application, adding the specific time period of three months to the statutory requirement that the grantee must commence services within a minimum period of time to be determined by the Secretary. This subpart also adds a new criterion to the statutory criteria for evaluation: the extent to which a grant award will enable an entity that is already providing business incubation services to appreciably enhance those services. OIED added this criterion in order to ensure that the grant is funding new incubation services, such that there is a return for the investment made in the incubator, rather than merely paying existing incubators for services they would have otherwise provided.
- Subpart D – Grant Awards: Describes how OIED will disburse grant funds to awardees according to the statute. This subpart also includes the statutory prohibition on awarding an IBIP grant that duplicates other Federal funding, but adds a clarification that duplicative funding means any funding from other Federal grants that would overlap with the IBIP grant for the same activities described in the applicant’s IBIP proposal.
- Subpart E – Grant Term and Conditions: Establishes an initial grant term of three years, with the opportunity to renew for one additional three-year term if certain conditions are met, in accordance with the statute. This subpart also lists the purposes for which awardees may use the grant funds, requires awardees to provide non-Federal contributions in an amount at least 25 percent of the grant unless the conditions for waiver of that requirement are met, lists the minimum requirements awardees must meet in providing incubation services, and requires the awardee to submit a report at the end of the grant year that provides, among other things, a detailed breakdown of the Native businesses and Native

entrepreneurs the incubator helped establish or serve. These items are all statutory but are included in the regulation to assist readers in finding all relevant IBIP grant information in one location.

- Subpart F – OIED Grant Administration: Provides that OIED will conduct an annual evaluation of each IBIP awardee’s success, facilitate relationships between awardees and educational institutions serving Native American communities, and collaborate with other Federal agencies that administer business and entrepreneurial programs. These items are also all statutory but are included in the regulation to assist readers in finding all relevant IBIP grant information in one location.

Note: The final rule replaces references to the Office of Indian Energy and Economic Development (IEED) with the Office of Indian Economic Development (OIED) to reflect the organizational change that moved the Division of Energy and Minerals Development from OIED to the Bureau of Indian Affairs Office of Trust Services.

IV. Responses to Comments on the Proposed Rule

On April 13, 2021, OIED published a proposed rule to implement the IBIP. *See* 86 FR 19162. During the public comment period, OIED hosted two Tribal consultation sessions by webinar on May 12, 2021, and May 13, 2021, to discuss the proposed rule. On May 12, 2021, representatives of 33 Tribes participated and on May 13, 2021, representatives of 14 Tribes participated. Comments on the proposed rule were accepted until June 14, 2021. OIED received a total of 11 written comment submissions on the proposed rule, including three from Tribes, two from Tribal and Indian organizations, five from organizations including four financial organizations, and one from an individual. Several commenters expressed support for both the legislation and regulation. No changes to the proposed regulatory text were made as a result of the consultation or public comments, but OIED responds to the comments as follows.

A. Comments on Subpart A (General Provisions and Eligibility)

1. Objective of IBIP

One Tribe and one economic development organization stated that the provision at § 1187.1(b), providing that the incubator will assist businesses to offer products and services to reservation communities, is too narrow because the objective of the IBIP should be to mentor and grow Native-owned businesses regardless of their potential market.

Response: The Act establishes the IBIP for the establishment and operation of business incubators that “serve reservation communities” by providing business incubation and other business services to Native businesses and Native entrepreneurs. *See* 25 U.S.C. 5803(a). The Act also requires an applicant incubator to describe one or more reservation communities it will serve. *See* 25 U.S.C. 5803(c)(1)(B). For these reasons, the regulation reflects that the incubator will offer products and services to reservation communities. Incubators must serve businesses in reservation communities, but those businesses may have markets that extend beyond reservation communities and the benefits of the IBIP will be broader than reservation communities.

2. Eligibility

One organization commented on the requirement at § 1187.3(b)(4)(i) for a nonprofit to have been operational for not less than one year before receiving a grant. This commenter stated one year is insufficient and recommended at least three years.

Response: The one-year requirement is statutory and cannot be changed by regulation. *See* 25 U.S.C. 5803(b)(1)(C).

A privately held corporation commented that it should be eligible for the IBIP, but that the regulation limits eligibility of organizations to Tribal or private nonprofit organizations.

Response: Eligibility for the IBIP is established by statute and cannot be changed by regulation. *See* 25 U.S.C. 5803(b) (limiting eligible entities to the following four categories: (i) an Indian Tribe; (ii) a Tribal college or university; (iii) an institution of higher education; or (iv) a private nonprofit organization or Tribal nonprofit organization.)

Two commenters requested the regulation specifically list as eligible entities Native Community Development Financial Institutions (CDFIs) and Tribally chartered nonprofit organizations authorized by Internal Revenue Code 7871. One commenter stated that Native CDFIs fit the category of Tribal or private nonprofit organizations providing business and financial technical assistance.

Response: The applicant will need to demonstrate in its application that it meets the eligibility criteria in one of the four categories defined in the statute and regulation. At that time, the applicant can articulate why a particular entity, such as Native CDFIs or Tribally chartered non-profits, meets those qualifications.

One Tribe recommended that a preference or priority be granted to Tribes, Tribal colleges and universities, and Tribal non-profit organizations. Similarly, several other commenters stated that Native-led entities should be awarded IBIP grants over non-Native entities.

Response: The statute defines the categories of eligible entities to include institutions of higher education and private nonprofit organizations, which may or may not be Native led. *See* 25 U.S.C. 5803(b).

One commenter recommended that, if the final rule includes non-Native entities as eligible, then additional criteria should be added to application evaluations to ensure the funding benefits Native communities.

Response: Congress established the eligibility requirements and evaluation criteria, and adding the requested requirements goes beyond our statutory authority;

however, the evaluation criteria directs the Department to review whether the awardee will benefit Native American businesses and entrepreneurs.

B. Comments on Subpart B (Applying for a Grant)

A Tribe asked for clarification on whether in-kind support such as existing personnel or free use of existing office space to run the incubator counts toward the non-Federal contribution requirement. Another commenter requested examples of whether certain types of in-kind contributions and in-kind services would count toward the non-Federal contribution requirement, requesting at a minimum that the value of in-kind donation of incubator space and donated services to support the incubator or incubated businesses be included.

Response: The regulation requires applicants to describe in their applications their non-Federal contributions in an amount equal to not less than 25 percent of the grant amount requested. *See* § 1187.11(e). Non-Federal contributions may include donated space as measured by the value of rent, so that the applicant can use IBIP funding they receive for other purposes. Payroll for personnel working on the incubator who are not funded by IBIP funding may be allowable non-Federal contributions. The Notice of Funding Opportunity (NOFO) will provide more examples of allowable non-Federal contributions.

One commenter asked whether the non-Federal contribution has to be in hand as of the date of the application.

Response: The applicant must provide a commitment for the non-Federal contribution in the application, but does not have to have the contribution in hand on the date of the application. The applicant could rely on projected earnings, for example.

C. Comments on Subpart C (Evaluation of Grant Applications)

1. Evaluation Criteria

One Tribe commented that a Tribe's experience should be considered but additional points should not be given to Tribes that currently operate a business incubator because Tribes, both large and small, should not be at a disadvantage when competing for funding against currently operational applicants.

Response: The Department shares the goal of ensuring that both large and small Tribes benefit from the incubator program. Experience may help an applicant because applicants are required to commence providing services within three months under § 1187.20, but the NOFO will further clarify how applications will be ranked.

Two commenters stated that, when evaluating applications, OIED should consider metrics beyond financial impacts, such as services that enhance community well-being, to measure success. Another commenter stated that criteria should be based on success with clients, customer references, and completion of a viable product.

Response: Applicants will be requested to provide the milestones and outcomes of their project demonstrating to the Secretary the successful outcomes of the grant.

A Tribal organization commenter stated that IBIP funds should be awarded in a manner that equitably distributes funds to be regionally representative of Indian Country, and ensure that regionally focused programs are not precluded.

Response: OIED will be considering regional representation across Indian Country as part of the selection process. Details will be provided in the NOFO.

A Tribal organization commenter stated that OIED should consider socioeconomic factors, such as the size and location of eligible applicants, in awarding IBIP funds to ensure that Tribal nations with a small population or small land base have an opportunity to participate and benefit from the program.

Response: Each applicant will have to demonstrate that they are serving a diverse population and include justifications around socioeconomic factors and considerations related to size and location. For example, the evaluation criteria include a criterion for the

ability of the eligible applicant to provide services at geographically remote locations where quality business guidance and counseling is difficult to obtain). *See* § 1187.20(a)(3).

One commenter asked what “significant” means in the context of the criterion at § 1187.20(a)(3) for the ability of the eligible applicant to provide quality incubation services to a significant number of Native businesses or Native entrepreneurs (or provide such services at geographically remote locations where quality business guidance and counseling is difficult to obtain).

Response: The significance of the number of Native businesses or Native entrepreneurs will be driven by the applicant’s proposal and justification of how many Native businesses and Native entrepreneurs they intend to serve with the amount of funding requested.

2. Physical Location of Incubator

A Tribal organization commenter stated that Tribal nations should be able to decide whether to incubate only those businesses within their jurisdictional boundaries or incubate Native entrepreneurs located away from their Tribal homelands.

Response: Applicants have flexibility in demonstrating who they will serve as long as they serve one or more reservation communities (regardless of whether those communities are near their own Tribe’s homelands) and demonstrate that they have a competitive process for selecting Native businesses and Native entrepreneurs to participate in the business incubator. *See* §§ 1187.3(b)(4) and 1187.44(a)(2).

A Tribe urged OIED to recognize that transportation issues in Indian Country are significant and that, unless incubation services are within reservation boundaries or walking distance of a reservation, many Native businesses will have difficulty accessing the services. This Tribe recommended adding the word “significant” to the requirement

to give priority to eligible applicants that will provide business incubation services on or near reservation communities.

Response: OIED is aware of the substantial transportation challenges in Indian Country and expects that proposals will provide options to address those barriers. The final rule does not add the word “significant” because priority will necessarily be significant, given that this is the only criterion granted priority.

A Tribal organization commenter stated that OIED should waive the requirement for program funds be used to provide physical workplace due to the COVID-19 pandemic and to support applicant use of IBIP funds to provide incubator services to Native businesses that cannot access the incubator’s physical location due to remoteness, pandemic restrictions, and other barriers identified by Tribes and Tribal applicants.

Response: The requirement for the incubator to provide physical space is statutory, so it cannot be waived. *See* 25 U.S.C. 5803(b)(1)(B), (c)(1)(E).

A Tribe stated that, in conducting the site evaluation, OIED should refrain from imposing requirements for dedicated office space for each business and instead allow flexibility for co-working space or “hotel” style offices to allow the incubator to serve the largest number of participants.

Response: The incubator must be able to offer physical space to its participating businesses, but there is flexibility in how the incubator delivers services to the businesses.

One commenter stated that only applicants with existing workspace can apply but that OIED should allow funding to be used to construct and remodel space for small businesses.

Response: The regulation provides that the applicant does not have to be in possession of the proposed site at the time of the application. *See* §§ 1187.11(f) and 1187.12.

D. Comments on Subpart D (Grant Awards)

One commenter noted that § 1187.30 provides that grant funds will be in annual installments but may be more frequently (as long as not more than quarterly), and noted that in their experience an annual disbursement is preferable.

Response: OIED intends to make annual disbursements unless otherwise requested by the applicant, as stated in the rule.

E. Comments on Subpart E (Grant Term and Conditions)

1. Renewals

A commenter suggested that the regulation should measure an incubator's performance as compared with other small businesses across the country and outside the IBIP to ensure the incubators are providing enough resources before renewing the grant.

Response: The regulation (at § 1187.41(a)(2)) provides that OIED will measure the performance of the awardee's business incubator, as compared to the performance of other business incubators receiving grants under the IBIP, because this is a statutory requirement. *See* 25 U.S.C. 5803(d)(4).

A Tribe recommended OIED also assess, in determining whether to renew, whether the incubator model continues to be beneficial to the Tribe and to the businesses.

Response: OIED will conduct annual evaluations to measure successful outcomes of the grant based on the milestones and outcomes for the project the incubator included in their application. *See* § 1187.50. OIED will consider the results of the annual evaluation in determining whether to renew a grant award. *See* § 1187.41(a)(1).

A commenter stated that the regulation should include benchmarks to measure incubators' success and suggested imposing additional requirements such as requiring incubators to invest in community cohesion, leverage their development to secure funding from State and local governments, reallocate a portion of the grant money toward investments with return equity, and make increased visibility in public and private sectors and goal to attract potential investors.

Response: Applicants will be requested to provide the milestones and outcomes of their project demonstrating to the Secretary the successful outcomes of the grant.

2. Use of Grant Funds

A Tribe recommended that an allowable use of grant funds be for staffing purposes.

Response: Use of grant funds may include staffing. *See* 25 U.S.C. 5803(e)(2)(D). Applicants will describe their costs within their proposed budget.

A commenter welcomed the flexibility of allowing grant funds to be used for appropriate uses typically associated with business incubators and suggested acceptable uses of grant funds should include revolving loan funds, job creation, and technology commercialization, among other uses.

Response: The applicant will define in the proposal how the grant funds will be used and what services and approaches it will take.

3. Waiver of Requirement for Non-Federal Contribution

One Tribe suggested eliminating the requirement for non-Federal contributions and one stated that the waiver authority must be construed broadly because of the impact on Tribes of the COVID-19 pandemic causing significant economic losses. A Tribal organization also requested OIED consider a broader waiver of the non-Federal contribution requirement and another commenter supported providing a blanket waiver for the first round of awarded IBIP grants.

Response: OIED will continue to require the non-Federal contribution as required in the statute; however, OIED recognizes the difficulties Tribes have encountered during the pandemic and waiver decisions will be considered in accordance with its waiver authority based on the criteria in § 1187.43.

A commenter encouraged OIED to allow applicants to request waivers in advance of the grant application deadline for IBIP.

Response: The statutory criteria for waiving the non-Federal contribution include that the incubator will provide quality business incubation services and that one or more reservation communities to be served are unlikely to receive similar services – these are both determinations that OIED cannot make until it reviews the full application. *See* 25 U.S.C. 5803(d)(3)(B).

Two commenters recommended clarifying that applicants’ requests for waivers will not negatively impact evaluation of their grant applications.

Response: OIED understands the difficulty in obtaining non-Federal contributions and will clarify in the NOFO whether non-Federal contributions will be included in the ranking criteria.

4. Minimum Requirements Awardees Must Meet

A Tribe stated that Tribes should have broad discretion in structuring the competitive process by which participants are selected to participate in the incubator.

Response: The applicant defines what their competitive process will be under § 1187.44(a)(2).

A Tribe stated that, in the requirement for applicants to provide entrepreneurship and business skills training and education to Native businesses and Native entrepreneurs, the list of training and education topics in the curriculum should be introduced by “including but not limited to” and list an overview of legal issues including choice of entity and legal structures, and an overview of Federal small business lending and contracting programs.

Response: The applicant defines in their application what their curriculum will include, so no change to the regulation is necessary.

A Tribe stated that the requirement for the incubator to provide access to investors should include a “best efforts” qualifier because the barriers in accessing capital in Indian Country are well documented.

Response: The applicant defines in their application what their best efforts will include, so no change to the regulation is necessary.

A Tribe stated that it is not unusual for for-profit business incubators to make a nominal investment in a business in exchange for equity in that business, accomplishing the dual goals of providing the new business with startup capital and help the program become self-sustaining. The Tribe requested clarification on whether such investments by business incubators participating in IBIP would be permissible.

Response: The IBIP is not structured in a way that would allow the business incubator to obtain return equity from its participating businesses. Incubators may, however, request that successful business participants give back to the program by mentoring and sharing best practices with other businesses.

5. Reports

A Tribe recommended that the regulation also require awardees to submit reports detailing capital investments and revenue growth.

Response: The grantee is free to share information detailing capital investments and revenue growth in its report, but the rule does not require this information in the reports. Instead, the required annual report focuses on the number of Native businesses and entrepreneurs the incubator assists and their performance while participating and after graduation or departure from the incubator.

A commenter stated that the requirement for reporting business performance could be a deterrent for small business startups who are wary of making financial disclosures, so other metrics such as number of new employees or customers should be used instead.

Response: Financial oversight will consist of Federal reporting toward the grant funding only. The applicant will be able to specify how they are going to oversee the incubator activities and justify use of the grant funding and can craft those metrics to

avoid revealing any financial disclosures that it believes will deter Native businesses and entrepreneurs from participating in the incubator.

F. Comments on Subpart F (Grant Administration)

1. Evaluation of Awardee Performance

A Tribe stated the requirement for awardees to become operational should become operational should be lengthened from 3 months to allow awardees at least 6 months.

Response: When determining the allowable “start-up” timeframe for grantees, OIED also considers the total time available to implement the activities under the grant. Since these are only one-year grants, allowing a 6-month “start-up” timeframe would leave only 6 months for implementation. For that reason, the final rule retains the 3-month timeframe for the grantee to commence providing services.

Two commenters stated their appreciation that the regulation does not include a requirement that businesses graduate from incubator programs within a certain period of time.

Response: The applicant decides when participant businesses graduate from their program. (The incubator awardee itself receives funding for 3 years with one potential renewal.)

2. Coordination with Other Federal Agencies

A Tribe noted that one of the greatest problems facing economic development in Indian Country is the lack of practical broadband access and urged adding to the regulation that the named federal Departments and agencies be required to provide broadband support to the maximum extent practicable.

Response: The requested additional language was not included in the final regulation because that language is not clearly authorized by the statute; however, OIED

will actively engage with our Federal partners to continue to improve broadband in Indian Country. *See* 25 U.S.C. 5806.

3. Funding

Several commenters requested that additional funding be appropriated to this program.

Response: OIED relies upon Congress for annual appropriations for the IBIP.

G. Miscellaneous Comments

A Tribe requested OIED consider the unique sovereign status of Tribes and unique issues Tribes and Tribal members face when attempting to obtain conventional financing in Indian Country. Another commenter also noted that Native American businesses and entrepreneurship will differ in practice and view across Tribal communities. Another commenter provided statistics on the percentage of minority small business owners and stated that Native American businesses account for the smallest number of minority-owned firms.

Response: OIED recognizes the challenges of conventional financing in Indian Country. Congress also found in creating the IBIP that all entrepreneurs face challenges when transforming ideas into businesses, and entrepreneurs that want to provide services to reservation communities face additional barriers. The IBIP is intended to help address these challenges and includes, as a minimum requirement, that IBIP awardees offer culturally tailored incubation services to Native businesses and Native entrepreneurs. *See* 25 U.S.C. 5803(e)(2)(A) and § 1187.44(a)(1).

A commenter stated that OIED should commit to making information about IBIP applications, grant awards, and the impact of IBIP funding available publicly. This commenter stated that the information would be valuable for documenting demand for the program, understanding the program's reach and impact across Native communities and contexts, and raising the visibility of grant recipients.

Response: Disclosure of grant applications and reports are limited by Privacy Act and Freedom of Information Act (FOIA) exemptions, but OIED plans to share grant awards and success stories while complying with Privacy Act restrictions and FOIA exemptions.

A non-Tribal commenter urged OIED to prioritize feedback from Tribes and Native-led organizations in the rulemaking process.

Response: OIED hosted government-to-government consultation with Tribes during preparation of this final rule and considered Tribes' input accordingly.

V. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866, 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. The Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 et seq.). This rule establishes a program to provide grants for business incubators, some of which may be small entities, but the \$5 million in total annual appropriations is not expected to reach the threshold of having a significant economic effect on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. Because this rule establishes a program supported by \$5 million in annual appropriations this rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a monetarily significant or unique effect on State, local, or Tribal governments or the private sector. This rule would establish a program to provide grants to certain business incubators that will serve Tribal communities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual

property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has substantial direct effects on federally recognized Indian Tribes because the rule requires early Tribal involvement in the design of a process that will have significant impact on one or more recognized Tribes. OIED conducted Tribal consultation sessions by webinar on May 12 and 13 for input on the proposed rule. Responses to comments received from Tribes are included in the Responses to Comments section, above.

I. Paperwork Reduction Act

This rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

Brief Description of Collection: This information collection includes items that an applicant must include in an application for an Indian Business Incubator Program (IBIP) grant and that IBIP awardees must include in the annual report. Applicant contents include such items as a description of the reservation communities the incubator will serve, a three-year plan regarding the services to be offered to participating entrepreneurs, among other items, information regarding applicant's experience in conducting assistance programs, and a site description of the location at which the applicant will provide work space to participants, among other items. The annual report includes a detailed breakdown of the entrepreneurs the incubator has served for the year covered by the report.

Title: Indian Business Incubator Program (IBIP).

OMB Control Number: 1076-0199.

Form Number: None.

Type of Review: New collection.

Respondents/Affected Public: Individuals, Private Sector, Government.

Total Estimated Number of Annual Respondents: 50.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: Ranges from 5 to 35 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondents' Obligation: Required to obtain a benefit.

Frequency of Response: Occasionally.

Total Estimated Annual Non-Hour Burden Cost: \$0.

A proposed rule, soliciting comments on this collection of information for 30 days, was published on April 13, 2021 (86 FR 19162). No comments were received on the information collections.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and recommendations for the information collection should be sent within 30 days of publication of this notification to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to consultation@bia.gov. Please reference OMB Control Number 1076-0199 in the subject line of your comments.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National

Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Determination To Issue Final Rule with Immediate Effective Date

This final rule is not subject to the effective date limitation of 5 U.S.C. 553(d) because there is good cause to dispense with the 30-day delayed effective date requirement in this case. The regulation sets out how a grant program will be conducted, under provisions largely prescribed by statute. A delayed effective date would be unnecessary and contrary to the public interest because it would only serve to delay the Department's ability to solicit applications for the grant funding.

List of Subject in 25 CFR Part 1187

Indians-business and finance, Loan programs – business, Loan programs-Indians, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends chapter VI of title 25 of the Code of Federal Regulations by adding part 1187 to read as follows:

PART 1187 – INDIAN BUSINESS INCUBATORS PROGRAM

Subpart A – General Provisions and Eligibility

Sec.

1187.1 What is the Indian Business Incubators Program (IBIP)?

1187.2 What terms do I need to know?

1187.3 Who is eligible to receive a grant under the IBIP?

Subpart B – Applying for a Grant

1187.10 How does an eligible applicant apply for a grant under the IBIP?

- 1187.11 What must an application include?
- 1187.12 What must an applicant include in a written site proposal?
- 1187.13 May applicants submit a joint application?
- 1187.14 What additional items must a joint application include?

Subpart C – Evaluation of Grant Applications

- 1187.20 How will OIED evaluate each application?
- 1187.21 How will OIED evaluate the proposed location of the business incubator?
- 1187.22 How will OIED conduct the site evaluation?

Subpart D – Grant Awards

- 1187.30 How will OIED disburse the grant funds to awardees?
- 1187.31 May OIED award a grant that is duplicative of Federal funding from another source?

Subpart E – Grant Term and Conditions

- 1187.40 How long is the grant term?
- 1187.41 May OIED renew a grant award?
- 1187.42 What may awardees use grant funds for?
- 1187.43 May OIED waive the requirement for the non-Federal contribution?
- 1187.44 What minimum requirements must awardees meet?
- 1187.45 What reports must the awardee submit?

Subpart F – OIED Grant Administration

- 1187.50 How will OIED evaluate awardees' performance?
- 1187.51 Will OIED facilitate relationships between awardees and educational institutions serving Native American communities?
- 1187.52 How will OIED coordinate with other Federal agencies?

Authority: 25 U.S.C. 2, 9; 25 U.S.C. 5801 *et seq.*

Subpart A – General Provisions and Eligibility

§ 1187.1 What is the Indian Business Incubators Program (IBIP)?

The Indian Business Incubators Program (IBIP) is a program under the Native American Business Incubators Program Act in which the Office of Indian Economic Development (OIED) provides competitive grants to eligible applicants to establish and operate business incubators that serve Tribal reservation communities. With these grants, business incubators will:

- (a) Provide individually tailored business incubation and other business services to Native businesses and Native entrepreneurs to overcome the unique obstacles they confront; and

(b) Provide Native businesses and Native entrepreneurs with the tools necessary to start and grow businesses that offer products and services to reservation communities.

§ 1187.2 What terms do I need to know?

As used in the part:

Awardee means an eligible applicant receiving a grant under the IBIP.

Business incubator means an organization that:

- (1) Provides physical workspace and facilities resources to startups and established businesses; and
- (2) Is designed to accelerate the growth and success of businesses through a variety of business support resources and services, including--
 - (i) Business education, counseling, and advice regarding access to capital;
 - (ii) Networking opportunities;
 - (iii) Mentorship opportunities; and
 - (iv) Other services intended to aid in developing a business.

Eligible applicant means an applicant eligible to apply for a grant under § 1187.3.

IBIP means the Indian Business Incubator Program (IBIP) under the Native American Business Incubator Program Act.

Indian Tribe has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Institution of higher education means an educational institution in any State that—

- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of 20 U.S.C. 1091(d);
- (2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Native American or Native means a person who is a member of an Indian Tribe, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(d)).

Native business means a business concern that is at least 51-percent owned and controlled by 1 or more Native Americans.

Native entrepreneur means an entrepreneur who is a Native American.

OIED means the Office of Indian Economic Development in the Office of the Assistant Secretary – Indian Affairs.

Reservation means Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Secretary means the Secretary of the Interior.

Tribal college or university means an institution that—

- (1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or
- (2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

§ 1187.3 Who is eligible to receive a grant under the IBIP?

To be eligible to receive a grant under the IBIP, an applicant must:

- (a) Be able to provide the physical workspace, equipment, and connectivity necessary for Native businesses and Native entrepreneurs to collaborate and conduct business on a local, regional, national, and international level; and
- (b) Be one of the following entities:
 - (1) An Indian Tribe;
 - (2) A Tribal college or university that will have been operational for not less than one year before receiving a grant under the IBIP;
 - (3) An institution of higher education that will have been operational for not less than one year before receiving a grant under the IBIP; or
 - (4) A Tribal or private nonprofit organization that provides business and financial technical assistance and:
 - (i) Will have been operational for not less than one year before receiving a grant under the IBIP; and
 - (ii) Commits to serving one or more reservation communities.

Subpart B – Applying for a Grant

§ 1187.10 How does an eligible applicant apply for a grant under the IBIP?

Each eligible applicant desiring a grant under the IBIP must submit to the Secretary an application as described in the solicitation posted on www.grants.gov.

§ 1187.11 What must an application include?

An application for a grant under the IBIP must include:

(a) A certification that the applicant:

(1) Is an eligible applicant;

(2) Has or will designate an executive director or program manager to manage the business incubator; and

(3) Agrees to:

(i) A site evaluation by the Secretary as part of the final selection process;

(ii) An annual programmatic and financial examination for the duration of the grant; and

(iii) To the maximum extent practicable, to remedy any problems identified pursuant to the site evaluation and examination;

(b) A description of the one or more reservation communities to be served by the business incubator;

(c) A three-year plan that describes:

(1) The number of Native businesses and Native entrepreneurs to be participating in the business incubator;

(2) Whether the business incubator will focus on a particular type of business or industry;

(3) A detailed breakdown of the services to be offered to Native businesses and Native entrepreneurs participating in the business incubator; and

(4) A detailed breakdown of the services, if any, to be offered to Native businesses and Native entrepreneurs not participating in the business incubator;

(d) Information demonstrating the effectiveness and experience of the eligible applicant in:

- (1) Conducting financial, management, and marketing assistance programs designed to educate or improve the business skills of current or prospective businesses;
 - (2) Working in and providing services to Native American communities;
 - (3) Providing assistance to entities conducting business in reservation communities;
 - (4) Providing technical assistance under Federal business and entrepreneurial development programs for which Native businesses and Native entrepreneurs are eligible; and
 - (5) Managing finances and staff effectively;
- (e) A description of the applicant's non-Federal contributions, in an amount equal to not less than 25 percent of the grant amount requested; and
- (f) A site description of the location at which the eligible applicant will provide physical workspace, including a description of the technologies, equipment, and other resources that will be available to Native businesses and Native entrepreneurs participating in the business incubator, if the applicant is in possession of the site, or a written site proposal containing the information in § 1187.12, if the applicant is not yet in possession of the site.

§ 1187.12 What must an applicant include in a written site proposal?

If the applicant is not yet in possession of the site, the applicant must submit a written site proposal with their application that contains:

- (a) Sufficient detail for the Secretary to ensure, in the absence of a site visit or video submission, that the proposed site will permit the eligible applicant to meet the requirements of the IBIP; and
- (b) A timeline describing when the eligible applicant will be:
 - (1) In possession of the proposed site; and

- (2) Operating the business incubator at the proposed site.

§ 1187.13 May applicants submit a joint application?

Two or more eligible entities may submit a joint application for a project that combines the resources and expertise of those entities at a physical location dedicated to assisting Native businesses and Native entrepreneurs under the IBIP.

§ 1187.14 What additional items must a joint application include?

A joint application must:

- (a) Contain a certification that each participant of the joint project is an eligible entity under § 1187.3;
- (b) Demonstrate that together the participants meet the requirements of § 1187.13; and
- (c) Identify which of the entities submitting the joint application will be the lead contact for the purposes of grant management.

Subpart C – Evaluation and Award of Grant Applications

§ 1187.20 How will OIED evaluate each application?

In evaluating each application, OIED will consider:

- (a) The ability of the eligible applicant to:
 - (1) Operate a business incubator that effectively imparts entrepreneurship and business skills to Native businesses and Native entrepreneurs, as demonstrated by the experience and qualifications of the eligible applicant;
 - (2) Commence providing services within three months; and
 - (3) Provide quality incubation services to a significant number of Native businesses and Native entrepreneurs or provide such services at geographically remote locations where quality business guidance and counseling is difficult to obtain;

- (b) The experience of the eligible applicant in providing services in Native American communities, including in the one or more reservation communities described in the application;
- (c) The proposed location of the business incubator; and
- (d) The extent to which a grant award will enable an entity that is already providing business incubation services to appreciably enhance those services.

§ 1187.21 How will OIED evaluate the proposed location of the business incubator?

In evaluating the proposed location of the business incubator, OIED will:

- (a) Consider the program goal of achieving broad geographic distribution of business incubators; and
- (b) Give priority to eligible applicants that will provide business incubation services on or near the reservation of the one or more communities that were described in the application, except that OIED may give priority to an eligible applicant that is not located on or near the reservation of the one or more communities that were described in the application if OIED determines that:
 - (1) The location of the business incubator will not prevent the eligible applicant from providing quality business incubation services to Native businesses and Native entrepreneurs from the one or more reservation communities to be served; and
 - (2) Siting the business incubator in the identified location will serve the interests of the one or more reservation communities to be served.

§ 1187.22 How will OIED conduct the site evaluation?

- (a) Before awarding a grant to an eligible applicant, OIED will conduct an evaluation of the proposed site to verify that the applicant has (or will have) the physical workspace, equipment, and connectivity necessary for Native businesses and Native entrepreneurs to collaborate and conduct business on a local, regional, national, and/or international level.

(b) To determine whether the site meets the requirements of paragraph (a) of this section:

(1) If the applicant is in possession of the proposed site, OIED will conduct an on-site visit or review a video submission before awarding the grant.

(2) If the applicant is not yet in possession of the proposed site and has submitted a written site proposal, OIED will review the written site proposal before awarding the grant and will conduct an on-site visit or review a video submission to ensure the site is consistent with the written site proposal no later than one year after awarding the grant. If OIED determines the site is not consistent with the written site proposal, OIED will use that information in determining the ongoing eligibility of the applicant under § 1187.50.

Subpart D – Grant Awards

§ 1187.30 How will OIED disburse the grant funds to awardees?

OIED will disburse grant funds awarded to eligible applicants in annual installments except that, OIED may make disbursements more frequently, on request by the applicant, as long as disbursements are not made more frequently than quarterly.

§ 1187.31 May OIED award a grant that is duplicative of Federal funding from another source?

OIED may not award a grant under the IBIP that is duplicative of existing Federal funding from another source. Duplicative funding means any funding from other Federal grants that would overlap with the IBIP grant for the same activities described in the applicant's IBIP proposal.

Subpart E – Grant Term and Conditions

§ 1187.40 How long is the grant term?

Each grant awarded under the IBIP is for a term of three years.

§ 1187.41 May OIED renew a grant award?

(a) OIED may renew a grant award under the IBIP for one additional three-year term.

In determining whether to renew a grant award, OIED will consider for the awardee:

- (1) The results of the annual evaluation of the awardee conducted under § 1187.50;
- (2) The performance of the awardee's business incubator, as compared to the performance of other business incubators receiving grants under the IBIP;
- (3) Whether the awardee continues to be eligible for the IBIP; and
- (4) The evaluation consideration for initial awards under § 1187.20.

(b) Awardees that receive a grant renewal must provide non-Federal contributions in an amount not less than 33 percent of the total amount of the grant. Failure to provide the non-Federal contribution will result in noncompliance and OIED withholding of funds, unless OIED waives the requirement under § 1187.43.

§ 1187.42 What may awardees use grant funds for?

An awardee may use grant amounts for any or all of the following purposes:

- (a) To provide physical workspace and facilities for Native businesses and Native entrepreneurs participating in the business incubator;
- (b) To establish partnerships with other institutions and entities to provide comprehensive business incubation services to Native businesses and Native entrepreneurs participating in the business incubator; and
- (c) For any other uses typically associated with business incubators that OIED determines to be appropriate and consistent with the purposes of the IBIP.

§ 1187.43 May OIED waive the requirement for the non-Federal contribution?

OIED may waive the requirement for the non-Federal contribution, in whole or in part, for one or more years of the initial IBIP grant award if OIED determines that the waiver is appropriate based on:

- (a) The awardee's ability to provide non-Federal contributions;

(b) The quality of business incubation services; and

(c) The likelihood that one or more reservation communities served by the awardee will not receive similar services elsewhere because of the remoteness or other reasons that inhibit the provision of business and entrepreneurial development services.

§ 1187.44 What minimum requirements must awardees meet?

(a) Each awardee must:

(1) Offer culturally tailored incubation services to Native businesses and Native entrepreneurs;

(2) Use a competitive process for selecting Native businesses and Native entrepreneurs to participate in the business incubator; however, awardees may still offer technical assistance and advice to Native businesses and Native entrepreneurs on a walk-in basis;

(3) Provide physical workspace that permits Native businesses and Native entrepreneurs to conduct business and collaborate with other Native businesses and Native entrepreneurs;

(4) Provide entrepreneurship and business skills training and education to Native businesses and Native entrepreneurs including:

(i) Financial education, including training and counseling in:

(A) Applying for and securing business credit and investment capital;

(B) Preparing and presenting financial statements; and

(C) Managing cash flow and other financial operations of a business;

(ii) Management education, including training and counseling in planning, organization, staffing, directing, and controlling each major activity or function of a business or startup; and

(iii) Marketing education, including training and counseling in:

(A) Identifying and segmenting domestic and international market

opportunities;

(B) Preparing and executing marketing plans;

(C) Locating contract opportunities;

(D) Negotiating contracts; and

(E) Using varying public relations and advertising techniques;

(5) Provide direct mentorship or assistance finding mentors in the industry in

which the Native business or Native entrepreneur operates or intends to operate;

and

(6) Provide access to networks of potential investors, professionals in the same or

similar fields, and other business owners with similar businesses.

(b) Each awardee must leverage technology to the maximum extent practicable to provide Native businesses and Native entrepreneurs with access to the connectivity tools needed to compete and thrive in 21st-century markets.

§ 1187.45 What reports must the awardee submit?

(a) Not later than one year after the date OIED awards the grant, and then annually for the duration of the grant, the awardee must submit to OIED a report describing the services the awardee provided under the IBIP during the preceding year, including:

(1) A detailed breakdown of the Native businesses and Native entrepreneurs receiving services from the business incubator, including, for the year covered by the report:

(i) The number of Native businesses and Native entrepreneurs participating in or receiving services from the business incubator and the types of services provided to those Native businesses and Native entrepreneurs;

(ii) The number of Native businesses and Native entrepreneurs established and jobs created or maintained; and

(iii) The performance of Native businesses and Native entrepreneurs while participating in the business incubator and after graduation or departure from the business incubator; and

(2) Any other information the Secretary may require to evaluate the performance of a business incubator to ensure appropriate implementation of the IBIP.

(b) To the maximum extent practicable, OIED will not require an awardee to report the information listed in paragraph (a) of this section that the awardee provides to OIED under another program.

(c) OIED will coordinate with the heads of other Federal agencies to ensure that, to the maximum extent practicable, the report content and form under paragraph (a) of this section are consistent with other reporting requirements for Federal programs that provide business and entrepreneurial assistance.

Subpart F – OIED Grant Administration

§ 1187.50 How will OIED evaluate awardees' performance?

Not later than one year after the date on which OIED awards a grant to an eligible applicant under the IBIP, and annually thereafter for the duration of the grant, OIED will conduct an evaluation of, and prepare a report on, the awardee, which will:

- (a) Describe the performance of the eligible applicant; and
- (b) Be used in determining the ongoing eligibility of the eligible applicant.

§ 1187.51 Will OIED facilitate relationships between awardees and educational institutions serving Native American communities?

OIED will facilitate the relationships between awardees and educational institutions serving Native American communities, including Tribal colleges and universities.

§ 1187.52 How will OIED coordinate with other Federal agencies?

OIED will coordinate with the Secretaries of Agriculture, Commerce, and Treasury, and the Administrator of the Small Business Administration to ensure, to the maximum extent practicable, that awardees have the information and materials they need to provide Native businesses and Native entrepreneurs with the information and assistance necessary to apply for business and entrepreneurial development programs administered by those agencies.

Bryan Newland,

Assistant Secretary – Indian Affairs.

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